



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee  
Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

4

315-1200  
Provided by DEP

**A. Request Information**

1. Location of Project

Burns Ave.

a. Street Address

228

c. Check number

E. Walpole 02032

b. City/Town, Zip

\$120

d. Fee amount

2. Person or party making request (if appropriate, name the citizen group's representative):

Elizabeth Barrows

Name

189 Union Street

Mailing Address

East Walpole

City/Town

MA

State

02032

Zip Code

508 400 1113

Phone Number

Fax Number

lizbarrows616@gmail.com

Email Address

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Louis Petrozzi

Name

PO Box 212

Mailing Address

Westwood

City/Town

MA

State

02090

Zip Code

617 922 8700

Phone Number

781 440 0309

Fax Number

lou@wallstreetdevelopment.com

Email Address

4. DEP File Number:

315-1200

**B. Instructions**

1. When the Departmental action request is for (check one):

☒ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)

☐ Superseding Determination of Applicability – Fee: \$120

☐ Superseding Order of Resource Area Delineation – Fee: \$120

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.





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**B. Instructions (cont.)**

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a copy of this form and a copy of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

ELIZABETH A BARROWS  
189 UNION STREET  
E WALPOLE, MA 02032

228

53-9182/2113

11/12/19

Date

Pay to the  
Order of

Commonwealth of Massachusetts

\$ 120.00

One hundred twenty and

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Hundredths



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For

Elizabeth A Barrows MP

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0228

November 12, 2019

November 12, 2019

MASS DEP  
Southeast Regional Office  
20 Riverside Dr.  
Lakeville, MA 02347

RE: DEP File No. SE 315-1200

To whom it may concern,

We are a collection of abutters and neighbors exercising our right under M.G.L.C. 131 Section 40 to appeal the Order of Conditions provided by the Town of Walpole to Louis Petrozzi of Wall Street Development Corp to include work in both Bordering Land Subject to Flooding (BLSF) and Riverfront Area (RA).

We contend, that the applicant has improperly calculated the square footage of degraded area and that the inflated number drastically changes what is permitted for alteration in the Riverfront Area (RA) as defined in 310 CMR 10.58 (5) of the regulations.

It is also our opinion that the installation of utilities within the 100' buffer should not be permitted under limited project as it is for the purposes of private development. The adverse effects from the installation of utilities will result in the performance standards identified in 310 CMR 10.54 (4) (a) of the Bank not being met.

Lastly, we feel that the applicant has failed to address the impacts to Bordering Land Subject to Flooding (BLSF) or demonstrate compliance with 310 CMR 10.57(4) (a).

The project site is composed of three parcels; 119, 136 and 137, as shown on Walpole Accessors map 20. It consists of approximately 3.22 acres of land at the end of Burns Ave with one boundary on Union St.

Documentation supplied by BETA Group, Inc., a consultant hired by the Town of Walpole Conservation Commission, supports our statements above. Below, quoted directly from their submittal, *"The Residences at Burns Avenue Storm water and Wetlands Peer Review dated May 6, 2019"*; is information to support our statements above.

*"WETLAND PERFORMANCE STANDARDS AND IMPACTS REVIEW*

*BETA conducted a review of the submitted materials focusing on findings related to the project's compliance with state performance standards and definitions with primary attention to the Riverfront Area Performance Standards. In summary, it is BETA's opinion that the project does not currently meet the WPA Performance Standards.*

*The project currently quantifies a total of 19,799 square feet of impacts to Riverfront Area (RA), of the 50,713 square feet of total RA onsite (39%) and is proposing 1,834 square feet of RA "restoration".*

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*Based on BETA's site observations, the Degraded Riverfront Area Evaluation and Project Plans inaccurately identify the limits of the degraded area and require re-analysis to document compliance with the applicable performance standards...*

*\* BORDERING LAND SUBJECT TO FLOODING (BLSF) - WPA PERFORMANCE STANDARDS COMMENTS AND RECOMMENDATIONS*

*Because the project is not a public works project, the proposed utility infrastructure the limited project provision at 310 CMR 10.53(3)(d) can't be applied."*

According to the information provided by the applicants' consultant EcoTec, Inc, the total site has 50,713 sq of riverfront area. The consultants' letter included with the applicants' Notice of Intent states that there exists 13,614 sf of degraded area in the riverfront area of which 11,780 sf will be re-development. Applicant states 6,185 sf is development in non-degraded riverfront area and 1,834 sf is restoration of degraded riverfront area.

It is not disputed that the site was used by a prior owner over a half century ago to dump unwanted materials; however, the consultant states that because test pits reveal the presence of historic fill and a portion of the area is devoid of topsoil that the area should be considered degraded.

Documentation supplied by BETA Group, Inc., a consultant hired by the Town of Walpole Conservation Commission, supports our position. Below, quoted directly from their submittal, *"The Residences at Burns Avenue Storm water and Wetlands Peer Review dated May 6, 2019"*; is information to argue the consultants' statement above.

*"RIVERFRONT AREA – WPA PERFORMANCE STANDARDS COMMENTS & RECOMMENDATIONS*

*The Project Plans and Degraded Riverfront Area Evaluation inaccurately identify the limits of the degraded area onsite. The Applicant's determination was made based on test pits, however, the location of these test pits are not shown on the plan. Soil evaluations completed by BETA's MassDEP approved Licensed Soil Evaluator indicate that portions the mapped "degraded area" contain is debris and refuse, meeting the definition of degraded under the WPA Regulation. Other locations within the area are free of debris and do not meet the regulatory definition. In accordance with the Rivers Protection Act and Wetlands Protection Regulation definition, degraded RA consists of paved areas, structures, area lacking topsoil, junkyards, and abandoned dumping grounds."*

Despite the area being used as a dumping ground many years ago, anyone walking the site can see that at present the site is a spawning habitat and ecosystem of its own, protecting not only one, but two Riverfronts namely Traphole and Pickerel Brooks; the last cold water fisheries to contain brook trout.

The site contains pervious, well vegetated, forested area containing mineral soil and is by our observation performing the vital functions of the riverfront area. Because of this, it is our opinion and also the opinion of the Town consultant BETA, Group Inc., that the calculation for degraded area within the Riverfront area is too high.

November 12, 2019

Bordering land subject to flooding is critical to the protection of wildlife habitat and significant to flood control and storm damage prevention. As you will see on the attached photos, the current canopy provides an important cover for wildlife habitat.

Equally as important, as abutters to this site we consider ourselves "persons aggrieved" by the apparent disregard of the impact to the Bordering Land Subject to Flooding by the Walpole Conservation Commission. The act, in this case the order of conditions by the Issuing Authority has failed to protect the Bordering Land Subject to Flooding by allowing the installation of utilities within close proximity to Pickerel brook which is also in an area within the 100 year flood plain on FEMA maps.

The required presumption of the Walpole Conservation Commission as stated in 310 CMR 10.57 (3) is that the filling, dredging or alteration of land, in this case the installation of utilities, in the Land Subject to Flooding is significant to the respective interests specified in 310 CMR 10.57(1)(a). Although this presumption is rebuttable, the applicant did not clearly show that said land does not play a role in the protection of said interests. Since the presumption was not overcome the performance standards of proposed work on a Bank shall not impair the:

- The physical stability of the Bank;
- The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
- The capacity of the Bank to provide important wildlife habitat functions.

Documentation supplied by BETA Group, Inc., a consultant hired by the Town of Walpole Conservation Commission, supports our position. Below, quoted directly from their submittal, *"The Residences at Burns Avenue Storm water and Wetlands Peer Review dated May 6, 2019"*; is information to support our statement above.

*""""WETLAND PERFORMANCE STANDARDS AND IMPACTS REVIEW*

*Although not the focus of this peer review, the proposed project results in impacts to Bordering Land Subject to Flooding (BLSF) as defined at 310 CMR 10.57(2)(a) and the federally regulated Floodway, both associated with the unnamed perennial stream north of the site. Impacts to BLSF have not been quantified and the performance standards under 310 CMR 10.57(4)(a) have not been addressed. Additionally, field observations indicate that the Bank of the unnamed perennial stream to the north of the site is unstable in the area of the proposed utility installation. Work adjacent to the Bank may further impact the stability of the Bank."*

While we feel that it would be impossible to replicate existing conditions post installation of the utilities, at the very least the applicant failed to provide adequate restoration plans for the vital cover that the trees currently provide to Pickerel brook. The plants and size of plants proposed are low growing and will not provide the canopied type cover that exists today. This cover is an integral part of flood control and we the direct abutters may suffer an injury from flooding of our properties in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in [G.L.] c. 131, § 40." 310 Code Mass. Regs. § 10.04 (2008).

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While neither the Notice of Intent, or, Order of Conditions refer to any impact to banks, we feel the presumption and general performance standards set forth in 310 CMR 10.54 should be adhered to. As taken from this section of the regulations:

(3) If presumption is not overcome, any proposed work on a Bank shall not impair the following:

- The physical stability of the Bank;
- The water carrying capacity of the existing channel within the Bank;
- Ground water and surface water quality;
- The capacity of the Bank to provide breeding habitat, escape cover and food for fisheries;
- The capacity of the Bank to provide important wildlife habitat functions. A project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, Effective 10/24/2014 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION 1987, that (cumulatively) alter(s) up to 10% or 50 feet (whichever is less) of the length of the bank found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. In the case of a bank of a river or an intermittent stream, the impact shall be measured on each side of the stream or river. Additional alterations beyond the above threshold may be permitted if they will have no adverse effects on wildlife habitat, as determined by procedures contained in 310 CMR 10.60.

In measuring the adverse effects we feel the work will alter wildlife habitat beyond the thresholds permitted under 310 CMR 10.54(4) (a)5., 10.56(4)(a)4., 10.57(4)(a)3. and 10.58(4) (d) 1.. Project would eliminate trees and upon the maturity of replanted saplings it would substantially reduce its capacity to provide the important wildlife habitat functions listed in 310 CMR 10.60(2)

We respectfully request that you review the aforementioned concerns and any other not specifically addressed in this letter regarding impacts to resource areas identified in the Wetlands Protection Act which will occur as a result of the order of conditions.

Sincerely,



Elizabeth Barrows of 189 Union St, East Walpole, MA  
Citizen Group Representative

November 12, 2019

**[This page is intentionally left blank; followed by "Residents supporting the request to Appeal" page]**



November 12, 2019

**["Residents supporting the request to Appeal"]**

Elizabeth Barrows of 189 Union St, East Walpole, MA

Stephen Barrows of 189 Union St, East Walpole, MA

Cathy Campbell of 35 Burns Ave, East Walpole, MA

Christopher Campbell of 35 Burns Ave, East Walpole, MA

Robert J. Campbell of 31 Burns Ave, East Walpole, MA

Carol Campbell of 31 Burns Ave, East Walpole, MA

Michael Cofsky of 29 Burns Ave, East Walpole, MA

Joan Cofsky of 29 Burns Ave, East Walpole, MA

Jack Conroy of 455 Elm Street, Walpole, MA /Abutter at 38/40 Burns Ave, East Walpole, MA

Zachary Laidley of 10 Burns Ave, East Walpole, MA

Melissa Paquette of 10 Burns Ave, East Walpole, MA

Joyce Sheehan of 28 Burns Ave, East Walpole, MA

Joseph Sheehan of 28 Burns Ave, East Walpole, MA

William L. Usevich of 201 Union Street, East Walpole, MA

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**Addendum A:**

Please see attached pictures from the sides and front of Pickerel brook as observed from Union St. We feel installation of the utilities will have an adverse effect on the ability of the bank, riverfront, and bordering land subject to flooding to comply with performance standards of the Wetlands Protection Act.

We have also attached pictures of some of the wildlife that can be observed that use the river as a corridor to travel daily. The existing canopy is an integral part of providing cover to wildlife who live year round and those like the Blue Heron (not shown) that stop when migrating annually. It is also vital in maintaining the temperature for the fish that swim these waters.